



July 11, 2003

Noteworthy

- [Bush, Senate Should Strive for Dignified Debate on Nominees; Morton M. Kondracke, *Roll Call*, July 11, 2005](#)
- [Schumer's Agenda, *The New York Post*, July 10, 2005](#)

“But I don't believe being conservative is an extraordinary circumstance, nor is being liberal an extraordinary circumstance. We're going to talk to each other. We're going to listen to each other. And it would be very good for the country if we could treat the nominee decently, not prejudge who they are and what they might do, and go back to the traditions of the Senate. There's nothing extraordinary, George, about being conservative or liberal. Mark's right: You got Scalia, you got Ginsberg, you got Rehnquist, you got Thomas; there's liberals and conservatives that have come and gone on the court. There's nothing extraordinary. What I think we're all against is judicial activism, whether you're liberal or conservative, where judges, sort of, make political points, not legal points.”

-Senator Graham, *ABC: This Week*, July 10, 2005

“I think when the Democrats talk in terms of consensus, they mean they want to pick the nominee or co-pick it. But the fact of the matter is that -- look, I'll quote Senator Kennedy. He said this. He said: "It is offensive to suggest that a potential justice of the Supreme Court must pass some presumed test of judicial philosophy. It is even more offensive to suggest that a potential justice must pass the litmus test of a single-issue group.”

-Senator Hatch, *NBC; Meet the Press*, July 10, 2005

“When they talk about consultation, they want it to be done their way. And, frankly, this administration has done more consulting than any administration in my whole 29 years in the United States Senate. And it's not only going to be pre-consultation. I think it'll be post-consultation, once the person is nominated.”

“And I believe that they deserve a lot of credit for it. They've actually consulted, as we sit here, with dozens of senators in the United States Senate. That's never been done before. Usually, a president will talk to the leadership, and then talk to the chairman and ranking member on the Judiciary Committee, but they've gone way beyond that. “

“By the way, can I make one other point on that? The Constitution doesn't require consultation. There's nothing in there that says the president has to consult. Washington, Adams, Jefferson, Monroe, Jay all said that the president solely picks these people.

“But this president is consulting as a courtesy, but that courtesy should go both ways: not just from him to us as senators, but from us as senators to him.”

-Senator Hatch, NBC; *Meet the Press*, July 10, 2005

Bush, Senate Should Strive for Dignified Debate on Nominees

July 11, 2005

*By Morton M. Kondracke,
Roll Call Executive Editor*

Is it remotely possible that last week's terrorist attack on America's closest ally could engender enough unity here to enable the forthcoming fight over Supreme Court nominees to be conducted with dignity and decorum?

It's certainly possible to imagine what the White House called “a dignified process of confirmation” — a process of calm, deep philosophical probing of the nominees' judicial views, a process that would educate the public about the differences between conservative believers in “original intent” and liberals who argue that we have a “living constitution.”

Both Republicans and Democrats claim to abhor “judicial activism.” But what is that, exactly? One could well imagine Senate Judiciary Committee hearings and floor debate that explored the question.

But the U.S. political system, and especially the judicial confirmation system, has come to resemble nothing less than gang warfare, making the chances of dignified proceedings slim, even in wartime.

The situation is such that President Bush and Republicans ought to desist from calling for wartime unity in connection with the confirmation process, lest Democrats accuse them of “exploiting fear” to “deprive Americans of their liberties” through the court system.

Democrats are putting the responsibility on Bush to nominate a candidate to succeed swing-voter Sandra Day O'Connor who will “bring the country together,” but that's a tall order, given the Democrats' record of excoriating even moderate conservatives as “extremists.”

The process began way back in 1969, when Democrats and the AFL-CIO defeated a dignified South Carolina appellate judge, Clement Haynsworth, on trumped-up grounds that he was anti-civil rights and anti-union.

In a rage, President Richard Nixon nominated G. Harrold Carswell, a much-reversed district court judge who really had been a segregationist. He was defeated —

appropriately — in 1970 before Nixon settled on Harry Blackmun, later the author of the Roe v. Wade decision that legalized abortion nationwide.

The record suggests that Republicans and Democrats have vastly different modes for handling judicial nominees they disagree with.

When President Bill Clinton nominated liberals Ruth Bader Ginsburg and Stephen Breyer — whose names were actually suggested by GOP Sen. Orrin Hatch (Utah) — they were allowed to avoid stating their views on major legal issues and were overwhelmingly confirmed.

Ginsburg was approved, 97-3, in 1993 even though she had been general counsel of the American Civil Liberties Union and replaced conservative associate Justice Byron White, tilting the court balance to the left. Breyer, who replaced Blackmun a year later, was approved 89-9.

This is in sharp contrast to the way Democrats treat controversial GOP nominees. It's true that arch-conservative Antonin Scalia sailed through, 98-0, in 1986. But the Democrats' pattern is one of vituperation, character assassination — and, lately, use of the filibuster, all distinctly not in keeping with a spirit of national unity.

Democrats made Clarence Thomas out to be a sexual harasser and pornography consumer when his real offense was rigid conservatism. The 1987 diatribe by Sen. Edward Kennedy (D-Mass.) against nominee Robert Bork ("Robert Bork's America is a land in which women will be forced into back-alley abortions") is a classic of the genre.

The comparatively recent use of the filibuster by Democrats has spawned the Republicans' nuclear option and the "Gang of 14" agreement, which gives Bush virtual carte blanche in making court nominations.

Seven Democratic Senators are pledged not to filibuster any nominee unless he or she presents an "extraordinary circumstance." One of the seven, Sen. Ken Salazar (D-Colo.), said that just-confirmed appellate judge Janice Rogers Brown, seemingly an ideological clone of Clarence Thomas, might not pass muster.

But it would take abandonment of the agreement by three of the seven Democrats to make a Democratic filibuster possible. And that would likely be grounds for three Republicans to abandon the agreement and join GOP leaders in changing Senate rules so that court nominees can be confirmed by simple majority vote.

What Bush most wants to accomplish with these nominations is a mystery. Presumably, it's to shift the court decisively in a "strict constructionist" direction. He certainly won that right in the 2004 election, and Democrats ought to respect it. Even though they make Justice O'Connor the standard for an acceptable "moderate conservative" nominee, Democrats should understand that Bush's choice is likely to be to the right of her.

Nevertheless, Democrats — and the party's liberal supporters — seem set to oppose almost any Bush nominee, including Attorney General Alberto Gonzales. Republicans fear that "endless examination" will be the Democrats' tactic.

Democrats have a right to probe as deeply as they want into a nominee's legal views, but they can't in good faith oppose a nominee who won't prejudge pending cases. They all agreed to that when Ginsburg refused.

Bush can help secure national unity by picking intellectually strong nominees who can't be tagged as right-wing "activists." But, given the historical record, it's up to Democrats to decide whether this debate is truly dignified.

Schumer's Agenda
The New York Post
7/10/05

With rumors rife of an imminent second vacancy on the U.S. Supreme Court, the question at week's end was: Will President Bush get his wish that the coming replacement debate be a "dignified process"? ...

So what happens next?

Fireworks, given the rather foreboding words uttered last week by New York's senior senator.

"We are contemplating how we are going to go to war over this," Chuck Schumer was overheard saying into his cellphone on a[n]... Amtrak trip. ...

As the senior Democrat on the Senate Judiciary subcommittee on the courts, Schumer is the Democrats' point man on Bush's bench picks.

Yes, Chuck Schumer is a leader of what in more civil times was known as the loyal opposition.

But don't forget his other agenda.

Schumer has a political job: He's chairman of the Democratic Senatorial Campaign Committee, tasked with raising money and recruiting candidates for next year's elections.

Thus, the confirmation hearings give him a unique and convenient platform.

The more Schumer demonizes Bush and Senate Republicans -- especially on Supreme Court nominees, the easier it is for him to fundraise and recruit.

With all that at stake, a "dignified process" is the last thing Schumer wants. He benefits from a partisan foodfight -- as do his fellow Democrats.

And who suffers?

Well, the nominee, obviously -- one more Robert Bork or Clarence Thomas gets his name dragged through the mud.

But when Schumer & Co. declare "war" -- strictly for partisan gain -- to prevent the president from fulfilling his constitutional duty to select judges, it's the country that'll suffer.

And the responsibility would be at Chuck Schumer's feet.